



FOIA

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Foreseeable Harm Standard

Applying the "Foreseeable Harm" Standard

After taking all of these openness principles into account, there still will be records and portions of records for which protection will remain entirely appropriate. As the Attorney General recognized in his Guidelines, "the disclosure obligation under the FOIA is not absolute." Congress included exemptions from mandatory disclosure to protect against different harms, such as, for example, harm to national security, harm to personal privacy, and harm to law enforcement interests.

Under the Attorney General's Guidelines, before withholding a record, the agency must reasonably foresee that disclosure would harm an interest protected by one of the exemptions. Thus, FOIA professionals should examine individual records with an eye toward determining whether there is foreseeable harm from release of that particular record, or portion thereof. Each record should be reviewed by agencies for its content, and the actual impact of disclosure for that particular record, rather than simply looking at the type of document or the type of file the record is located in.

Thus, for example, a requested record might be a draft, or a memorandum containing a recommendation. Such records might be properly withheld under Exemption 5, but that should not be the end of the review. Rather, the content of that particular draft and that particular memorandum should be reviewed and a determination made as to whether the agency reasonably foresees that disclosing that particular document, given its age, content, and character, would harm an interest protected by Exemption 5. In making these determinations, agencies should keep in mind that mere "speculative or abstract fears" are not a sufficient basis for withholding. Instead, the agency must reasonably foresee that disclosure would cause harm. Moreover, agencies must be mindful of the President's directive that in the face of doubt, openness prevails.

Creating a "New Era of Open Government"

MICHAEL F. BENNET
COLORADO

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March 15, 2017

Mr. Kevin S. Minoli
Acting General Counsel
Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dear Mr. Minoli:

I write to inquire about your Agency's regulations, guidance, processes, and standards for implementing the Freedom of Information Act (FOIA). As you know, FOIA provides vital transparency and access to information for the American people.

The FOIA Improvement Act of 2016 requires agencies to adopt a presumption of openness, withholding information "only if . . . disclosure would harm an interest protected by an exemption" or "disclosure is prohibited by law."¹ I would appreciate your assistance in confirming that your Agency is in full compliance with the FOIA, including the new requirements of the 2016 Act.

I would appreciate if you could please identify and explain what changes your Agency has made to the way it implements FOIA, including any updated or new regulations, guidance, processes, procedures, standard operating procedures, bulletins, or notices. In particular, please also identify and explain any changes your Agency has made to comply with the recent changes to the FOIA. For these materials, please identify the date on which changes were made and the manner in which they differ from prior implementation materials. Please also provide training materials for Agency employees on complying with the FOIA, as well as any written instructions provided to individuals who are involved in searches for responsive records to FOIA requests.

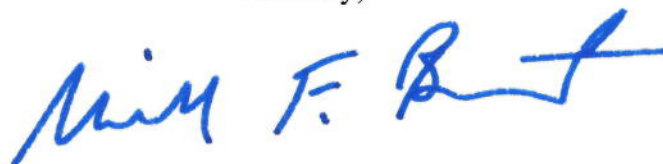
In addition, I wish to inquire about what effect proposed budget cuts may have on your Agency's FOIA responses. Please provide information on your Agency's funding and staffing for FOIA operations for each of the past five fiscal years, and any projection available on how proposed budget cuts would affect funding and staffing in FY2018. Please also provide statistics on the number of FOIA requests your Agency received and processed in FY2016, as well as its FOIA backlog, for each of the past five fiscal years.

¹ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185)

Finally, moving forward, I would appreciate that you notify my office any time you make changes to your FOIA guidance, processes, or standards.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. F. Bennet", with a stylized flourish at the end.

Michael F. Bennet

Freedom of Information Act Training (FY 2017)

To receive credit for this training you must click on every slide.

ONLINE TRAINING

OVERVIEW

FY 2017 FOIA Training will provide you with:

- A general understanding of FOIA
- Information about the FOIA Improvement Act of 2016
- FOIA points of contact



What is the Freedom of Information Act?

- The FOIA is a law that gives any person the right to access information from over 100 federal agencies. Click [here](#) to read the FOIA Statute, signed in 1966.
- This right is enforceable by law. Click [here](#) to read court decisions.
- The FOIA only applies to Executive Branch agencies.
- Under the FOIA, agencies only produce records. Agency staff do not respond to questions.
- Other guidance is available from the Department of Justice (DOJ) Office of Information Policy:
<https://www.justice.gov/oip/oip-guidance>



EPA Policy and Procedures

- EPA's National FOIA Program provides overall FOIA policy, procedures and guidance.
- Click [here](#) to become familiar with EPA FOIA Policy.
- EPA's National FOIA Procedures are available [here](#).
- Each Headquarters Program and Regional Office also has a set of Procedures. Contact your Headquarters FOIA Coordinator or Regional FOIA Officer for a copy.



What is a record under FOIA?

- Under FOIA, a record is information in an agency's possession and control in any format including electronic format. DOJ notes that for FOIA purposes, the term "records" includes *all* tangible documentations of information regardless of whether they are records under the Federal Records Act, 44 U.S.C. § 3301.
- The definition of records under FOIA is broader than the definition used by the EPA National Records Management Program.
- Agency employees responding to a FOIA request must keep records in accordance with EPA Records Schedules. FOIAonline is a official record keeping system.



Searching for Records

- If asked to search for records, you may need to look in a variety of locations. Responsive records may be located in:
 - * Email sent to off-site storage
 - * Filing cabinets (hard copy records)
 - * Personal and share drives (texts/pictures)
 - * SharePoint sites
 - * Records
 - * EZ Records/ECMS
 - * Mobile phones
- Except in limited circumstances to be discussed with your FOIA Officer/Coordinator and/or FOIA attorney, searches for Microsoft Outlook email messages should be performed by the Agency's centralized Discovery Services within the Office of Environmental Information (OEI).
- Each office has a Search Point of Contact (called SPOC) who will submit the search request to OEI's Discovery Services on your behalf. The list of SPOCs is available on the EPA Intranet at: <http://intranet.epa.gov/foia/MS-Outlook-Email-Search-QuickReference.html>.



Time Limits

- At EPA, FOIA is everyone's responsibility. For most EPA employees, their role in processing requests will be searching and reviewing documents to determine if the documents are potentially responsive to the FOIA request.
- By law, FOIA requests must be processed within specific time frames. These are:
 - 20 working days to respond to the requester, and
 - 10 additional working days if "unusual circumstances" exist, as described in the FOIA.



FOIA Requesters and Requests

- Requester – Any individual (including non-U.S. citizens); corporation or association; public interest group; or state, local, tribal, or foreign government. Requests may also be submitted by the Government Accountability Office or a member of Congress.
- Requests must be submitted in writing. Most requests are submitted through a Web-based system called FOIAonline.
- Requesters may be contacted by Agency staff to clarify the request.
- Requesters will receive the final Agency response, prepared by staff, signed by a Division Director or equivalent.
- If the requester is dissatisfied with the Agency's response, he or she may file an administrative appeal.
- If EPA fails to respond to a request, the requester can file a lawsuit without having to file an administrative appeal.



FOIA Exemptions

- Like all agencies subject to the FOIA, EPA applies a presumption of openness when responding to FOIA requests.
- When the Agency withholds information, the records must fall under at least one of nine exemptions. Click [here](#) for the list of all nine exemptions.
- Some of the most widely used exemptions deal with draft documents (b)(5); attorney-client privilege (b)(5); confidential business information (b)(4); and protecting personal information (b)(6). There is also an exemption if the information is protected from disclosure by another statute (b)(3).



THE FOIA IMPROVEMENT ACT OF 2016

- On June 30, 2016, the President signed the *FOIA Improvement Act of 2016*, which changed several provisions in the FOIA. The key changes relate to the following:
 - Final response letters
 - Requirements for obtaining an additional 10 days to respond
 - Foreseeable harm statement
 - Non-exempt information
 - Search fees
 - Time limit for claiming the deliberative process privilege
- Click [here](#) to link to the Department of Justice summary of the Amendments.



Final Response Letters

- Final response letters:
 - Include a list of any FOIA exemptions applied and the basis for withholding any information along with instructions on filing an appeal when records are withheld.
 - The released records, if any, are usually made available through FOIAonline.
- A final response letter must now:
 - Increase the number of days from 30 to **90** for the requester to appeal a final response;
 - Inform the requester of his or her right to seek assistance from the Agency's FOIA Public Liaison; and
 - Tell the requester that the Agency's FOIA Public Liaison or the Office of Government Information Services (part of National Archives and Records Administration) can provide dispute resolution services.
 - Click [here](#) for sample letters.



Coordinating Multi-Office Responses

- EPA's FOIA Procedures state that there is a "Lead Office" to coordinate search and response.
- Other offices are called "Contributing Office(s)."
- Coordination among EPA offices is important in providing a timely response.
 - The Lead Office and all Contributing Offices must work closely together to develop the response.
 - In general, the National FOIA Program is not involved in coordination between the Lead Office and Contributing Offices.



Additional 10 Working Days

- The FOIA says that an agency may take an additional 10 working days to respond to a FOIA request when there are “unusual circumstances.”
- “Unusual circumstances” are defined by the FOIA as situations when there is a need:
 - to search for and collect records from field offices, or other establishments;
 - to search for, collect, and examine a voluminous amount of records; or
 - for consultations with another agency or among two or more components within the same agency.
- If the agency cannot respond to the request within the extended period, then it must notify the requester in a timely manner that he or she has the right to seek dispute resolution services from the Office of Government Information Services.



Foreseeable Harm Standard

- Under the FOIA Improvement Act of 2016, it is only possible to withhold information when:
 - There is a foreseeable harm and an exemption applies
or
 - The information cannot be released by law.



25-year limit on Deliberative Process Privilege (Exemption 5)

- When a record is at least 25 years old, it is no longer protected under the Deliberative Process Privilege.
- Exemption 5 also covers Attorney-Client or Attorney Work Product privileges. There is no change for using Exemption 5 for these privileges.
- Click [here](#) for a list of all the exemptions.

A photograph of wooden letter blocks. In the foreground, the word 'SEPARATE' is spelled out in a row of eight blocks. Below it, the letters 'M', 'C', 'D', and 'O' are scattered. In the background, more blocks are visible, including 'N', 'I', 'R', 'E', 'P', 'A', 'R', 'T', 'M', 'C', 'D', 'O'.

Segregate Nonexempt Information

- The FOIA requires agencies to segregate *releasable information in a responsive record from exempt information* in a responsive record.
- A document should be released in part if any of the information is releasable.
- Non-responsive information within an otherwise responsive record should be released, unless it qualifies under an exemption and can be redacted.



Limiting Search Fees

- The 2016 Amendments further limit the agency's ability to charge for search fees. Click [here](#) for the DOJ FOIA fee guidance.
- Different limitations apply when there are "unusual circumstances" to extend the response time. The list of unusual circumstances may be found by returning to the page called "Additional 10 Working Days."



CONCLUSION

- Thank you for your interest in the FOIA.
- Please feel free to contact the EPA National FOIA Program with questions or feedback on this training.
 - Click [here](#) for a list of your local contact on the FOIA Intranet site.
 - EPA FOIA Service Center can be reached by phone at 202-566-1667.

FY 2015 Freedom of Information Act (FOIA) Training

- Welcome to the Fiscal Year (FY) 2015 Freedom of Information Act (FOIA) Training.
- This course will take about 20 minutes to complete.

About this Training

Objective

- The Environmental Protection Agency is launching Freedom of Information Act (FOIA) Training in FY 2015 to help all EPA personnel learn about:
 - The government's obligation under the FOIA and the purpose of FOIAonline,
 - Who can submit a FOIA request and what records are subject to the FOIA,
 - The EPA's process for responding to FOIA requests and the key roles, responsibilities and resources.

About this Training: Knowledge Check

Knowledge Check

- There are questions to test your knowledge at the end of each module.

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- Who Can Make a FOIA Request?
- What Records are Subject to the FOIA?

Module 3: EPA's FOIA Process

- Workflow for Responding to FOIA requests
- HQ FOIA Coordinators, Regional FOIA Officers and FOIA resources

Module 1: The Government's Obligation to the Public Under the FOIA

Overview

Welcome to EPA's FY 2015 FOIA Training, Module 1: The Government's Obligation to the Public under the FOIA. At the end of this module, you will:

- Have a general understanding of the framework of the FOIA,
- Know about the sources of guidance for implementing the FOIA, and
- Know about the purpose of FOIA libraries and FOIAonline.

Module 1: The Government's Obligation to the Public Under the FOIA

What is the FOIA?

- The FOIA was enacted on July 4, 1966, and provides any person with the right, enforceable in court, to obtain access to federal agency records, except to the extent that any portions of such records are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.
- The FOIA also requires agencies to disclose certain categories of information through publication in the Federal Register or on agency websites.
- President Obama issued a memorandum directing agencies to administer the FOIA with the presumption of openness, noting that the FOIA "is the most prominent expression of a profound national commitment to ensuring an open Government."
- The Attorney General has also encouraged agencies "to readily and systematically post information online in advance of any public request."
- In this lesson, we will explore the basic structure of the FOIA and certain provisions concerning the government's disclosure responsibilities.

Module 1: The Government's Obligation to the Public Under the FOIA

Guidance for Implementing the FOIA

- There are a number of resources available that can help you implement the FOIA.

Module 1: The Government's Obligation to the Public Under the FOIA

Sources of FOIA Guidance

FOIA Statute

The text of the [FOIA statute \(PDF\)](http://www.gpo.gov/fdsys/pkg/USCODE-2012-title5/html/USCODE-2012-title5-partI-chap5-subchapII-sec552.htm) (18 pp, 62 K, [About PDF](#)) can be found on the EPA website (<http://www.gpo.gov/fdsys/pkg/USCODE-2012-title5/html/USCODE-2012-title5-partI-chap5-subchapII-sec552.htm>) and the Department of Justice's website (http://www.justice.gov/oip/foia_guide09/foia-final.pdf).



Module 1: The Government's Obligation to the Public Under the FOIA

Sources of FOIA Guidance

President Obama's FOIA Memorandum

On his first full day in office, January 21, 2009, President Obama issued a memorandum to the heads of all departments and agencies on the FOIA directing agencies to administer the FOIA with the presumption of openness, noting that the FOIA “is the most prominent expression of a profound national commitment to ensuring an open Government.” Read the full text of the [President's FOIA Memorandum \(PDF\)](http://www2.epa.gov/foia/foia-resources) (2 pp, 92 K, [About PDF](#)). <http://www2.epa.gov/foia/foia-resources>



Module 1: The Government's Obligation to the Public Under the FOIA

Sources of FOIA Guidance

Attorney General Holder's FOIA Guidelines

In accordance with the President's FOIA memorandum, on March 19, 2009, Attorney General Holder issued new FOIA guidelines, which called on all agencies to reaffirm the government's commitment to accountability and transparency. This includes implementing the presumption of openness called for by the President, having effective systems for responding to requests, proactively disclosing information, using technology in the FOIA, and responding to requests in a timely manner. Select this [link](#) to read the full text of the [Attorney General's FOIA Guidelines \(PDF\)](#) (3 pp, 1.2 MB, [About PDF](#)).



Module 1: The Government's Obligation to the Public Under the FOIA

Sources of FOIA Guidance

FOIA Policy - [http://intranet.epa.gov/foia/docs/FOIA-Policy-August2014-09-30FINAL\(with-electronic-signature\).pdf](http://intranet.epa.gov/foia/docs/FOIA-Policy-August2014-09-30FINAL(with-electronic-signature).pdf)

The FOIA policy establishes EPA requirements for complying with the Freedom of Information Act (FOIA) as amended, EPA FOIA regulations, and guidance issued by the U. S. Department of Justice and the National Archives and Records Administration, Office of Government Information Services. This policy supports open government through transparency, proactive disclosure, and, when possible, discretionary releases of information. It also serves as a framework for the associated procedures used to process FOIA requests and promote accountability for the timeliness and quality of EPA responses.

FOIA Procedures - <http://intranet.epa.gov/foia/FOIA-Procedures.html>

The Agency, program and regional offices' FOIA Procedures provide basic instructions for responding to Freedom of Information Act (FOIA) requests submitted to EPA. The procedures address statutory, regulatory, policy, procedural and processing requirements to be followed by all EPA organizations and must include the basic procedures that must be included in all office-specific FOIA processing procedures.

FOIA Intranet Website - <http://intranet.epa.gov/foia/>

EPA's FOIA intranet site provides information about EPA's National FOIA program. The site provides FOIA reports, guidance documents and training opportunities.

Module 1: The Government's Obligation to the Public Under the FOIA

FOIA Libraries and FOIAonline

FOIA Libraries contain records that are required to be made available to the public without having to file a FOIA request ([5 U.S.C. 552\(a\)\(2\) \(PDF\)](#)) (18 pp, 79 K, [About PDF](#)), as well as other records that the EPA discretionarily makes available to the public for inspection and copying. <http://www2.epa.gov/foia/foia-online-libraries>

The materials found in the EPA's FOIA Libraries include:

- Policy statements and interpretations that have been adopted by the EPA but not published in the Federal Register;
- Administrative staff manuals and instructions to staff that affect a member of the public;
- Copies of records that have been released to any person in response to a FOIA request and that have been requested, or that the EPA anticipates will be requested, at least three times under the FOIA (in other words, frequently requested records);
- An index of frequently requested records; and
- Links to other related sites and reference materials.

The public can use FOIAonline to search for previously released records as well as current and past FOIA requests. FOIAonline includes records from October 1, 2012, to the present.

Module 1: The Government's Obligation to the Public Under the FOIA

FOIA Libraries and FOIAonline

Consistent with the [EPA Freedom of Information Act Policy](#) (7 pp, 79 K, [About PDF](#)) and as specified in the [EPA Procedures for Responding to Freedom of Information Act Requests](#) (19 pp, 140 K, [About PDF](#)), all records provided by the EPA in response to a FOIA request are entered into FOIAonline for public viewing and searching unless:

- The volume of paper records is extremely large,
- Conversion to electronic format is not practical, or
- The response is subject to special handling requirements or policies (e.g., Confidential Business Information).

These exceptions will be reviewed on a case by case basis by the Agency FOIA Officer.

In addition, FOIAonline is a multi-agency Web-based application that enables the public to:

- Submit FOIA requests to participating agencies,
- Track the progress of an agency's response to a request,
- Search for information previously made available, and
- Generate up-to-the-minute reports on FOIA processing.

Module 1: The Government's Obligation to the Public Under the FOIA

Summary

You should now have a general understanding of:

- The Freedom of Information Act,
- Sources of guidance for implementing the FOIA, and
- The purpose of FOIA libraries and FOIAonline.

Module 1: The Government's Obligation to the Public Under the FOIA

Knowledge Check 1: Question

The public can use FOIAonline for which of the following purposes?

- A) Search for previously released records from October 1, 2012, to the present
- B) Submit FOIA requests to participating agencies
- C) Track the progress of an agency's response to a request
- D) Generate up-to-the-minute reports on FOIA processing
- E) All of the above

Module 1: The Government's Obligation to the Public Under the FOIA

Knowledge Check 1: Answer

The public can use FOIAonline for which of the following purposes?

- A) Search for previously released records from October 1, 2012, to the present
- B) Submit FOIA requests to participating agencies
- C) Track the progress of an agency's response to a request
- D) Generate up-to-the-minute reports on FOIA processing
- E) All of the above.**

Answer

The correct answer is (E).

All of these are purposes for which the public may use FOIAonline.

Module 2: FOIA Requests

Overview

Welcome to the EPA's FY 2015 FOIA Training, Module 2: FOIA Requests. At the end of this module, you will understand:

- Who can make a FOIA request, and
- What records are subject to the FOIA?

Module 2: FOIA Requests

Who Can Make a FOIA Request?

Any person – regardless of citizenship – can make a FOIA request including:

- Individuals
- Corporations
- Associations
- Academia
- Members of the Press
- State, local, tribal, and foreign governments

Requesters generally do not have to justify or explain their reasons for making requests. The Supreme Court has held that a requester's basic access rights under the FOIA are neither increased nor decreased based upon the requester's particular interest in the records sought.

However, fugitives from justice cannot make FOIA requests. Additionally, federal agencies are not considered persons and therefore cannot request records under the FOIA.

Module 2: FOIA Requests

What Records are Subject to the FOIA?

The Supreme Court has articulated a basic, two-part test for determining what constitutes “agency records” under the FOIA. “Agency records” are records that are (1) either created or obtained by an agency, and (2) under agency control at the time of the FOIA request. These are not the same as a “Federal Record” under the Federal Records Act.

http://www.epa.gov/records/policy/2155/rm_policy_cio_2155-3.pdf (See page 14, Federal Records definition)

There are various types of information that are subject to the FOIA. Specifically, the FOIA applies to “federal agency records” that exist and can be located in agency files. Agency records are defined as including “any information that would be an agency record . . . when maintained by an agency in any format, including electronic format.”

Records and portions of records may be protected from public disclosure by one of nine FOIA exemptions or three special law enforcement record exclusions. For more information about the nine FOIA exemptions, please visit (<http://www.foia.gov/faq.html#exemptions>). For more information about the three FOIA special law enforcement record exclusions, please visit (<http://www.foia.gov/faq.html#exclusions>).

Module 2: FOIA Requests

What Records are Subject to the FOIA?

The form of agency records can include any type of recorded information that is in the possession and under the control of the agency at the time of FOIA request, such as:

- paper documents,
- e-mails,
- video or audio tapes
- photos,
- text or other instant messages,
- electronic files maintained on your computer, on a server, storage medium (e.g., thumb drive) or in the cloud, and
- electronic records maintained in SharePoint, OneDrive and other EPA collaboration tools.

Module 2: FOIA Requests

What Records are Subject to the FOIA?

Typically when a search for records is conducted and responsive records are located in an agency file they are “in the possession” of an agency. However, for a record to be an agency record it must also be under the control of an agency. So what determines control? A good way to determine if a record is under the agency’s control is to look at several factors known as the “READ” factors. Each letter below represents one of these factors.

R: Record creator’s intent to retain or relinquish control

E: Extent to which agency personnel have relied on the record

A: Ability of the agency to use and dispose of the records as it sees fit

D: Degree to which the record was integrated into the agency’s record system. Records include those maintained in any format, including electronic formats.

Generally, if a record meets the READ requirement it is an Agency record for purposes of FOIA.

Module 2: FOIA Requests

Summary

You should now have a general understanding of:

- Who can make a FOIA request, and
- What records are subject to the FOIA?

Module 2: FOIA Requests

Knowledge Check 2: Question

Which of the following types of records are subject to the FOIA?

- A) Agency policy memoranda
- B) E-mails between employees regarding EPA activities
- C) Draft EPA materials
- D) EPA work-related documents hosted on EPA SharePoint and OneDrive sites
- E) All of the above

Module 2: FOIA Requests

Knowledge Check 2: Answer

Which of the following types of records are subject to the FOIA?

- A) Agency policy memoranda
- B) E-mails between employees regarding EPA activities
- C) Draft EPA materials
- D) EPA work-related documents hosted on EPA SharePoint and OneDrive sites
- E) All of the above**

Answer

The correct answer is (E).

All of these records would be subject to the FOIA because they are maintained and controlled by the Agency.

Module 2: FOIA Requests

Knowledge Check 3: Question

Who can make a FOIA request?

- A) Individuals
- B) Corporations
- C) State, local, tribal, and foreign governments
- D) All of the above

Module 2: FOIA Requests

Knowledge Check 3: Answer

Who can make a FOIA request?

- A) Individuals
- B) Corporations
- C) State, local, tribal and foreign governments
- D) All of the above**

Answer

The correct answer is (D).

All of these examples can make FOIA requests.

Module 3: EPA's FOIA Process

Overview

Welcome to the EPA's FY 2015 FOIA Training, Module 3: EPA's FOIA Process. At the end of this module, you will understand:

- The workflow for responding to FOIA requests.
- Various FOIA roles and responsibilities, and
- FOIA resources that are available online.

Module 3: EPA's FOIA Process

Workflow for Responding to FOIA Requests

The Agency FOIA Program includes FOIA offices in each of the EPA Regional offices and the National FOIA Program at Headquarters; FOIA Officers and Coordinators assist program and regional offices in completing the various steps in the FOIA process. A FOIA office is the point of receipt for FOIA requests, where requests are reviewed for conformance with the FOIA requirements, acknowledged and assigned to the appropriate action office. An action office is the organizational unit that has the lead for responding to a FOIA request.

The steps involved in processing a FOIA request begin in a FOIA office in one of the regions or at EPA Headquarters, (i.e., National FOIA Program Office) and include the following five activities:

1. Receive, review, and acknowledge incoming requests
2. Determine if the request is in the correct FOIA office
3. Determine the fee category
4. Process fee-waiver and expedited processing request, if requested
(Determination issued by the Agency FOIA Officer)
5. Assign the request to the action office

Module 3: EPA's FOIA Process

Workflow for Responding to FOIA Requests

Once an action office receives a FOIA request for processing, it pursues the following actions in order to respond to the request:

1. Determine search parameters
2. Determine if additional responsive records are in other Agency organizations
3. Estimate processing fees
4. Determine response time
 - *Time Limits for Responding to a FOIA Request*
 - The Agency has twenty working days to respond to a FOIA request.
 - In “unusual circumstances,” the agency may extend the time limit by ten days by giving written notice to requester.
 - If the time period is extended beyond ten working days the agency must provide the requester with opportunity to narrow the scope of the request and provide the name of the Agency's FOIA public liaison.
5. Collect and review records
 - The Agency has a centralized search process for MS Outlook email. Therefore, for all searches involving MS Outlook email, please use your Search Point of Contact (SPOC) <http://intranet.epa.gov/foia/MS-Outlook-Email-Search.html>
6. Determine which records (or portions) may be released
7. Determine which records (or portions) must be withheld and specify FOIA exemption justifying withholding
8. Prepare response letter
9. Finalize processing fees
10. Obtain approval from the authorized official (Agency management)
11. Respond to request in FOIAonline
12. Finalize actions. Close out FOIA request, thereby making released records available.

Module 3: EPA's FOIA Process

Roles and Responsibilities

- **National FOIA Program** - The National FOIA Program is staffed by the Agency FOIA Officer and National FOIA Specialists who develop agency-level policies, procedures and trainings, respond to questions, provide guidance, deliver training, and make decisions on fee waiver and expedited processing requests. It also serves as the Headquarters FOIA Office for receiving FOIA requests. The National FOIA Program is located in the Office of Environmental Information.
- **Agency FOIA Officer** - The Agency FOIA Officer is the program manager for the National FOIA Program. The Agency FOIA Officer coordinates and oversees the EPA FOIA administration responsibilities; issues expedited processing and fee waiver determinations; develops and reviews FOIA procedures, policies, and guidance; provides advice to EPA FOIA personnel in the program and regional offices; prepares annual reports to the Department of Justice (DOJ); and provides FOIA training to agency employees. Agency FOIA Officer is located in the Office of Environmental Information at EPA Headquarters.
- **FOIA Coordinators** – FOIA Coordinators stay informed on requests and assignments; route requests to the appropriate action office or subject matter expert within a program office; track FOIA requests for timeliness; monitor the quality and timeliness of the responses in collaboration with the Agency FOIA Officer. Each Program Office at EPA Headquarters has a lead FOIA Coordinator who works under the general direction of the Agency FOIA Officer.
- **Regional FOIA Officers** - Regional FOIA Officers assign requests to the appropriate action office within the region; track FOIA requests; provide guidance to regional personnel in collaboration with the Agency FOIA Officer; coordinate with the Agency FOIA Officer and action offices on initial fee waiver decisions; compile data for the annual FOIA report; and monitor the quality and timeliness of responses in the regions. Regional FOIA Officers work under the general direction of the Agency FOIA Officer.
- **Search Point of Contact (SPOC):** - The SPOC serves as the authorized user of the eDiscovery SharePoint site, submits requests for MS Outlook email searches on behalf of his/her program or regional office, the results of the searched are picked up (and provide to the subject matter expert responsible for review of the search results, as needed), assist in designing search requests and performs review of the results.
- **Subject Matter Experts (Any EPA Employee)** - Subject matter experts identify and locate records requested under FOIA. These individuals are located in all EPA organizations and include all professional disciplines.

Module 3: EPA's FOIA Process

FOIA Public Liaison

If a FOIA requester has any concerns about his/her request, he/she may contact the FOIA Public Liaison. The FOIA Public Liaison position was established pursuant to Executive Order 13392, "Improving Agency Disclosure of Information," signed by President Bush on December 14, 2005. At the EPA, this position is held by the Chief of the FOIA and Privacy Branch in the Office of Information Collection, within the Office of Environmental Information. The FOIA Public Liaison can work with requesters and EPA offices to provide information on the status of requests and how the request is being handled and help address concerns requesters may have.

Module 3: EPA's FOIA Process

HQ FOIA Coordinators, Regional FOIA Officers and FOIA Resources

- EPA's FOIA Intranet Site which includes:
 - Headquarters FOIA Coordinators (PDF) (1 pg, 10 K, About PDF)
 - Regional FOIA Officers (PDF) (1 pg, 12 K, About PDF)
 - National FOIA Program Contact Information
- EPA's FOIA Internet Site which includes:
 - FOIA regulations specific to EPA
- FOIAonline

Module 3: EPA's FOIA Process

Knowledge Check 4: Question

When do you not enter records into FOIAonline?

- A) When the records contain Confidential Business Information (CBI)
- B) When the conversion of the records to an electronic format is not practical
- C) Both A and B

Module 3: EPA's FOIA Process

Knowledge Check 4: Answer

When do you not enter records into FOIAonline?

- A) When the records contain Confidential Business Information (CBI)
- B) When the conversion of the records to an electronic format is not practical
- C) Both A and B**

Answer

The correct answer is (C): Both A and B.

These are exceptions for not entering records into FOIAonline.

Module 3: EPA's FOIA Process

Summary

This concludes Module 3: EPA's FOIA Process.

In this module, we learned about the EPA's FOIA process, key FOIA roles and responsibilities, and several FOIA resources.

Course Summary

This concludes the FOIA Course.

You should now have a general understanding of:

- The government's obligation under the FOIA and the purpose of FOIAonline,
- Who can submit a FOIA request and what records are subject to the FOIA,
- The EPA's process for responding to FOIA requests, key FOIA roles and responsibilities, and online FOIA resources.

Congratulations

- You have now completed EPA's FY 2015 FOIA Training.



FY17 FOIA Awareness Training

Alternative Text Version

Asset Title: FY17 FOIA Awareness Training

Asset ID: epa/_s24_epa_foia_training_2017

URL:

https://epa.skillport.com/skillportfe/main.action?path=summary/CUSTOMER_DEFINED/_s24_epa_foia_training_2017

FY17 FOIA Awareness Training

Alternative Text Version

NOTE: This alternative text version is intended for employees with disabilities that use Assistive Technology. Since completion of text version cannot be automatically tracked, please notify your supervisor once you have read and understood the course, to ensure that you receive proper credit for completing the training.

FY17 FOIA Awareness Training

Welcome to the EPA's Freedom of Information Act Training course for fiscal year 2017.

Overview

This training will provide you with:

- A general understanding of the Freedom of Information Act, or "FOIA";
- Information about the FOIA Improvement Act of 2016; and
- FOIA points of contact.

What Is The Freedom of Information Act?

- The FOIA is a law that gives any person the right to access information from over 100 federal agencies. To read the FOIA Statute, signed in 1966, visit the [FOIA resources page](#) on the Department of Justice's (or DOJ's) website.
- This right is enforceable by law. To read the court decisions, visit the DOJ's [Court Decisions Overview page](#).
- The FOIA only applies to Executive Branch agencies.
- Under the FOIA, agencies only produce records. Agency staff do not respond to questions.
- For other guidance from the DOJ's Office of Information Policy, visit the [OIP Guidance page](#).

EPA Policy and Procedures

- EPA's National FOIA Program provides overall FOIA policy, procedures, and guidance.
- To learn more about EPA FOIA Policy, view the PDF on epa.gov's [FOIA Policy page](#).
- To view EPA's National FOIA Procedures, view the PDF on the [Procedures for Responding to FOIA Requests page](#).
- Each Headquarters Program and Regional Office also has a set of Procedures. Contact your Headquarters FOIA Coordinator or Regional FOIA Officer for a copy.

What Is A Record Under FOIA?

- Under the FOIA, a record is defined as information in an agency's possession and control in any format including electronic format. The DOJ notes that for FOIA purposes, the term "records" includes all tangible documentations of information, regardless of whether they are records under the Federal Records Act, found in Title [44 of the U.S. Code, Section 3301](#).
- The definition of a record under FOIA is broader than the definition used by the EPA National Records Management Program.
- Agency employees responding to a FOIA request must keep records in accordance with [EPA Records Schedules](#). [FOIAonline](#) is considered an official record keeping system.

Searching for Records

- If asked to search for records, you may need to look in a variety of locations. Responsive records may be located in:
 - Emails;
 - Filing cabinets (for hard copy records);
 - Personal and share drives;
 - SharePoint sites;
 - Records sent to off-site storage;
 - EZ Records and/or the Enterprise Content Management System, or ECMS; and
 - Mobile phones (for text messages and/or pictures).
- Except in limited circumstances to be discussed with your FOIA Officer or Coordinator and/or FOIA attorney, searches for Microsoft Outlook email messages should be performed by the Agency's centralized Discovery Services within the Office of Environmental Information (or OEI).
- Each office has a Search Point of Contact, called a "SPOC," who will submit the search request to OEI's Discovery Services on your behalf. The list of SPOCs is available on the [EPA Intranet site](#).

Time Limits

- At EPA, FOIA is everyone's responsibility. For most EPA employees, their role in processing requests will be searching and reviewing documents to determine if the documents are potentially responsive to the FOIA request.
- By law, FOIA requests must be processed within specific time frames. These are:
 - 20 working days to respond to the requester, and
 - 10 additional working days if "unusual circumstances" exist, as described in the FOIA.

FOIA Requesters and Requests

- A Requester can be any individual (including non-U.S. citizens); a corporation or association; a public interest group; or a state, local, tribal, or foreign government. Requests may also be submitted by the Government Accountability Office or a member of Congress.
- Requests must be submitted in writing. Most requests are submitted through a Web-based system called [FOIAonline](#).
- Requesters may be contacted by Agency staff to clarify the request.
- Requesters will receive the final Agency response that has been prepared by staff and signed by a Division Director or equivalent.
- If the requester is dissatisfied with the Agency's response, he or she may file an administrative appeal.
- If EPA fails to respond to a request, the requester can file a lawsuit without having to file an administrative appeal.

FOIA Exemptions

- Like all agencies subject to the FOIA, EPA applies a presumption of openness when responding to FOIA requests.
- When the Agency withholds information, the records must fall under at least one of nine exemptions. For the list of all nine exemptions, visit [EPA's Learn about FOIA page](#).
- Some of the most widely used exemptions deal with draft documents (b)(5); attorney-client privilege (b)(5); confidential business information (b)(4); and protecting personal information (b)(6). There is also an exemption if the information is protected from disclosure by another statute (b)(3).

The FOIA Improvement Act of 2016

- On June 30, 2016, the President signed the FOIA Improvement Act of 2016, which changed several provisions in the FOIA. The key changes relate to:
 - Final response letters;
 - Requirements for obtaining an additional 10 days to respond;
 - A Foreseeable Harm statement;
 - Non-exempt information;
 - Search fees; and
 - A time limit for claiming the deliberative process privilege.
- Visit the DOJ's [OIP Summary of the FOIA Improvement Act of 2016 page](#) for summary of the Amendments.

Final Response Letters

- Final response letters:
 - Include a list of any FOIA exemptions applied and the basis for withholding any information, along with instructions on filing an appeal when records are withheld.
 - The released records, if any, are usually made available through FOIAonline.
- A final response letter must now:
 - Increase the number of days from 30 to 90 for the requester to appeal a final response;
 - Inform the requester of his or her right to seek assistance from the Agency's FOIA Public Liaison; and
 - Tell the requester that the Agency's FOIA Public Liaison or the Office of Government Information Services (part of the National Archives and Records Administration) can provide dispute resolution services.
 - Sample letter can be found on the intranet's [FOIA page](#).

Coordinating Multi-Office Responses

- EPA's FOIA Procedures state that there is a "Lead Office" to coordinate the search and response.
- Other offices are called "Contributing Office(s)."
- Coordination among EPA offices is important in providing a timely response.
 - The Lead Office and all Contributing Offices must work closely together to develop the response.
 - In general, the National FOIA Program is not involved in coordination between the Lead Office and any Contributing Offices.

Additional 10 Working Days

- The FOIA says that an agency may take an additional 10 working days to respond to a FOIA request when there are "unusual circumstances."
- "Unusual circumstances" are defined by the FOIA as situations when there is a need:
 - to search for and collect records from field offices, or other establishments;
 - to search for, collect, and examine a voluminous amount of records; or
 - for consultations with another agency or among two or more components within the same agency.
- If the agency cannot respond to the request within the extended period, then it must notify the requester in a timely manner that he or she has the right to seek dispute resolution services from the Office of Government Information Services.

Foreseeable Harm Standard

- Under the FOIA Improvement Act of 2016, it is only possible to withhold information when:
 - There is a foreseeable harm and an exemption applies; or
 - The information cannot be released by law.

25-Year Limit on Deliberative Process Privilege (Exemption 5)

- When a record is at least 25 years old, it is no longer protected under the Deliberative Process Privilege.
- Exemption 5 also covers Attorney-Client or Attorney Work Product privileges. There is no change for using Exemption 5 for these privileges.
- For a list of all FOIA exemptions, visit [EPA's Learn about FOIA page](#).

Segregate Nonexempt Information

- The FOIA requires agencies to segregate the releasable information in a responsive record from the exempt information in a responsive record.
- A document should be released in part if any of the information is releasable.
- Non-responsive information within an otherwise responsive record should be released, unless it qualifies under an exemption and can be redacted.

Limiting Search Fees

- The 2016 Amendments further limit the agency's ability to charge for search fees. For the DOJ's FOIA fee guidance, view the [Fee Decision Tree diagram](#) on the intranet.
- Different limitations apply when there are "unusual circumstances" to extend the response time. The list of unusual circumstances may be found by returning to slide 13.

Conclusion

- Thank you for your interest in the FOIA.
- Please feel free to contact the EPA National FOIA Program with questions or feedback on this training.
 - For a list of your local contacts, please visit the [FOIA intranet site](#).
 - EPA's FOIA Service Center can be reached by phone at 202-566-1667.

Course Completed

Congratulations! You have completed the FY17 FOIA Awareness Training. Please notify your supervisor that you have completed the alternative text version of this training.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 12 2017

OFFICE OF
ENVIRONMENTAL INFORMATION

The Honorable Michael F. Bennet
United States Senate
Washington, D.C. 20510

Dear Senator Bennet:

Thank you for your letter addressed to Kevin Minoli, Acting General Counsel, dated March 15, 2017, regarding the EPA's implementation of the Freedom of Information Act (FOIA), and the new requirements resulting from the FOIA Improvement Act of 2016 (Act). As my office is responsible for EPA's FOIA program, I have been asked to respond on behalf of the Agency.

EPA receives an average of 10,500 FOIA requests from the public each year. The Agency has experienced an increase in the number and complexity of FOIA requests received so far in FY 2017. Based on the current rate of incoming FOIA requests in FY 2017, as compared to FY 2016, EPA is on track to receive approximately 10 percent more requests.

The Agency has taken a number of steps over the last few years to ensure the efficient management of FOIA responses. In 2012, the EPA played a key role in the development of FOIAonline, which is a shared-service FOIA processing and management tool used by multiple agencies, including the EPA, to manage FOIA responses. The EPA uses the system to track the processing of requests, to communicate with requesters regarding their requests, and to publicly post all documents appropriate for release to the public for anyone to access. Through its use of FOIAonline, the EPA has met the Act's codification of the "Rule of Three," which requires that documents that have been requested three or more times be available for public inspection. Since deployment of FOIAonline on October 1, 2012, the Agency has made approximately 831,405 records publicly available. In late 2014, the EPA established the FOIA Expert Assistance Team Office to assist Agency program and regional offices in responding to some of the largest and most complex FOIA requests received by the Agency. The Agency released hundreds of thousands of records to the public pursuant to FOIA in FY 2016.

At the EPA, FOIA is every employee's responsibility. The National FOIA Program located in EPA Headquarters supports FOIA staff in both headquarters and in each of the EPA's ten regional offices. The EPA has also created National FOIA Procedures for processing requests at the Agency, and each EPA program and regional office has created conforming procedures. Annual FOIA training is provided to all Agency employees, enabling all staff to play a critical role in processing FOIA requests. Through annual FOIA training, staff have been, and continue to be, instructed to apply the "foreseeable harm" standard now codified by the Act. The Agency has also been making strides in reducing its backlogs and successfully closed nine of the ten oldest FOIA requests and all ten of the Agency's ten-oldest appeals in FY 2016.

Internet Address (URL) • <http://www.epa.gov>

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After the Act was passed, the EPA took steps to implement the new requirements of the Act. The EPA includes language in all final FOIA responses that reflects the requirement that requesters now have 90 days to file an administrative appeal, as opposed to 30 days, and that requesters can obtain assistance from the FOIA Public Liaison and the Office of Government Information Services. The EPA also has discussed the requirements of the Act at monthly meetings of FOIA professionals across the Agency. The Agency's FY 2017 FOIA training, which is mandatory for all employees, includes a section that discusses the key components of the Act.

Finally, members of my staff are working with the EPA's Office of General Counsel to develop proposed revisions to the EPA's FOIA regulations. We also plan to update the Agency's National FOIA Procedures to reflect the final regulations which will address, among other things, the requirements of the 2016 amendments to FOIA. The National FOIA Office and the Office of General Counsel are also planning a national FOIA training conference for EPA FOIA staff and attorneys in September 2017.

Detailed information regarding the number of incoming requests, backlog, and estimated costs relating to FOIA can be found in EPA's FOIA Annual Reports submitted annually to the Department of Justice. Reports dating back to 2007 are available at <https://www.epa.gov/foia/foia-reports#annual>. Since the FY 2018 budget has not yet been passed, it is premature to comment on FY 2018 funding or staffing at this time.

Again, thank you for your letter. If you have any additional questions, please contact me or your staff may contact Kyle Aarons in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3638 or Aarons.Kyle@epa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Steven Fine".

Steven Fine, Ph.D.
Acting Assistant Administrator
and Acting Chief Information Officer

MANDATORY FOIA TRAINING - FY2019

FREEDOM OF INFORMATION ACT (FOIA) OVERVIEW

Text Alternative Version

NOTE: This text alternative version is intended for employees with disabilities who use Assistive Technology. Since completion of the text version cannot be automatically tracked, please notify your supervisor once you have read and understood the course, to ensure that you receive proper credit for completing the training.

Overview

The FY2019 Mandatory Freedom of Information Act (FOIA) Training is an overview of concepts and terms that you may encounter if you are requested to assist in processing a FOIA request. Acting Administrator Wheeler stated his commitment to the FOIA process in his email message dated July 30, 2018, titled “Public Participation and Transparency in EPA Operations.” There are several knowledge checks throughout the training. For detailed information on FOIA exemptions please review the FY 2018 Mandatory FOIA Training.

This Training Covers

- What is a FOIA request?
- What records are subject to FOIA?
- Categories of requesters
- What is a proper FOIA request?
- Practical application
- Determination of a proper FOIA request
- Processing Time of FOIA requests
- Tracks of FOIA requests
- Requests about publicly available information
- Types of responses to FOIA requests

What Is a FOIA Request?

- A FOIA request is a written request for agency records submitted through FOIAonline; regular mail or overnight mail.
- Verbal requests are not FOIA requests. You are not required to answer questions under the FOIA.
- All EPA FOIA requests are processed through [FOIAonline](#). If you need an account please contact your FOIA Officer or Coordinator. A list is available at: <http://intranet.epa.gov/foia/>.

What Records Are Subject to FOIA?

Agency Records

The FOIA applies to “federal agency records” that exist and can be located in agency files. The Supreme Court has articulated a basic two-part test for determining what constitutes “[agency records](#)” under the Freedom of Information Act (FOIA).

“Agency records” are records that are 1) either created or obtained by an agency, and 2) under agency control at the time of the FOIA request. In distinguishing between “personal” and “agency” records, you examine the totality of the circumstances. Factors to consider when differentiating “personal records” from “Agency records” include:

- The purpose for which the record was created;
- The degree of integration of the record into the agency’s filing systems; and
- The extent to which the record’s author or other employees used the record to conduct agency business.

What Records Are Subject to FOIA?

Format of Agency Records

The form of agency records can include any type of recorded information that is in the possession and under the control of the agency at the time that the FOIA request was received, such as:

- paper documents;
- e-mails;
- video or audio tapes;
- photos;
- text or other instant messages (e.g., Skype chat);
- electronic files maintained on a computer, on a server, a storage medium (e.g., thumb drive or CD), or in the cloud; and
- electronic records maintained in SharePoint, OneDrive, and other EPA collaboration tools.

Categories of Requesters

Three Categories

Any person may file a FOIA request. The requesters are classified into three categories to help determine the [fees](#), if any, the agency may apply for processing a FOIA request.

Commercial Use Requesters

These requesters are charged all three types of fees: search, review, and duplication.

Educational institutions, Noncommercial Scientific Institutions, and Representatives of the News Media

These requesters are only charged duplication fees, but receive the first 100 pages of paper copies for free.

Other Requesters

These requesters are charged search fees and duplication fees, but receive the first 2 hours of search and the first 100 pages of paper copies for free.

Categories of Requesters

Charging Fees

After applying the discounts, if any fees remain, please refer to the [Department of Justice fee tree](#).

Knowledge Check

What is a proper request?

- A. In writing.
- B. Includes fee commitment.
- C. Personal meeting notes.
- D. A and B
- E. A and C

What Is a Proper FOIA Request?

Pursuant to 5 USC §552(a)(3)(A), a proper FOIA request:

- “Reasonably describes” the records sought;
 - A reasonably described FOIA request is one that sufficiently describes the records sought so that an agency employee familiar with the subject matter can locate the records within a “reasonable amount of effort.”
- A proper FOIA request is made in writing and submitted through FOIAonline, regular mail, or overnight mail.
- And is made in accordance with EPA FOIA Regulations.
 - EPA’s FOIA Regulations at 40 C.F.R. § 2.102(c) states that the “written request should reasonably describe the records you are seeking in such a way that will permit EPA employees to identify and locate them. When possible, your request should include specific information about each record sought such as date, title or name, author, recipient, and subject matter.”

The FOIA does not require staff to do the following:

- Create new records (Database downloads are not new records);
- Answer questions, interrogatories, or perform research to answer requests;
- Explain or justify Agency decisions;
- Produce purely personal records; or
- Hold a request open that seeks records which EPA may create in the future.

If the FOIA request is improper then staff must give the requester the opportunity to clarify an improper request. There is a letter template available on the [FOIA Intranet site](#). Here are some examples of improper requests: all of the Administrators tweets (Which Administrator? Is there a topic or date range?)

Practice Tip: Many requesters appreciate the invitation to clarify so that they do not have to review records that are not relevant to their case or project.

Knowledge Checks

What primarily makes a request a proper FOIA request?

- A. It should be about agency records, i.e. records that are created or obtained by an agency and under the agency’s control at the time of the request.
- B. It should reasonably describes the records sought.
- C. It should be made in accordance with EPA regulations.
- D. All of the above.

Which of the following is a proper FOIA request?

- A. “Does EPA have files on ...”.
- B. “All of the emails between two named agency officials on the following subject...”.
- C. “What is the basis for the Agency’s decision to...”.
- D. “Provide the final XYZ Report when it is finished next month”.
- E. None of the above.

Determination of a Proper FOIA Request: Practical Application

Broad FOIA requests or the burden on the agency alone does not make a request improper – requests can be very large, yet still be proper.

If you are assigned to process a broad FOIA request, follow these steps:

Instead, focus on whether the request sufficiently describes the records sought such that there is enough information to develop and implement a search plan. If not, the request requires clarification with the requester.

Clarify and narrow, don’t close! (40 C.F.R. 2.102 (c))

Contact the requester by phone or email/letter to give them the opportunity to narrow the request. Most requesters are not familiar with how EPA records are organized and will benefit from your expertise to avoid receiving extraneous records. Start with subject matter, date range, list of custodians, or record type (Outlook files).

Follow up by email or letter if you contact the requester by phone. Document your phone call in the Comments section of FOIAonline.

Practice Tip: Remind the requester that they may make another request on the same subject if the responsive records do not meet their needs.

To know if a clarification is needed, ask yourself the following:

- Does the request sufficiently describe the records sought such that you know where to search for responsive records?
- Are the following elements provided: records type(s), date range, custodian(s), search terms?
- Can I articulate a search plan of action for the records sought?

If the answer to these questions is yes, develop and implement a search plan for responsive records.

However if the answer is no, contact the requester to clarify and document any communication.

Knowledge Check

What are the elements to consider when trying to narrow a FOIA request?

- A. Type(s) of records.
- B. Date range(s).
- C. Program Office(s)/Position(s)/Custodian(s).
- D. Subject matter(s)/Search Term(s).
- E. All of the 4 elements above.

Processing Time of FOIA

There are 3 timeframes for processing a FOIA request:

- 1) Statutory time limit: Under FOIA, the agency has 20 working days to process a request.
- 2) 10-day extension for unusual circumstances: If additional time is needed beyond the 20 working days, the requester should be provided a written notice invoking a 10-day extension for “unusual circumstances.” This will give a total of 30 days to respond to the request.
- 3) Extension beyond 30 days: If the request cannot be processed in 30 working days, the requester must be provided a written notice offering the opportunity to narrow the request so that it can be processed within 30 working days or arrange for an alternative timeframe for completion of processing.

Practice Tip: Set expectations and inform the requester about your best estimate for a response date.

Processing Time of FOIA Requests

Unusual circumstances are when, pursuant to 40 C.F.R. § 2.104(d), an agency may take an automatic 10 working day extension for:

- “...significant amount of EPA’s resources and time to search for, and appropriately examine the voluminous amount of records to complete this request” and/or
- “...to search for and collect the requested records from multiple EPA offices that are separate from the office processing the request”
- “... the need for consultation with another agency having a substantial interest in the determination of the request”.

A sample letter is available on the [FOIA Intranet site](#).

When you receive a FOIA request, think about whether you will need additional processing time beyond the statutory 20 working days and notify the requester within this legal timeframe. Do not wait! Failure to do so can also preclude the agency from being able to charge fees and enables requesters to go directly to federal district court relief. Regular communication with the requester is crucial to good FOIA processing. Document your calls in the Comments section of FOIAonline. Start early!

When can you stop the clock?

- The clock can be stopped one time while seeking clarification from a requester.
- It can also be stopped as many times as needed for fee-related reasons. This includes when the requester is required to provide an assurance of payment and has failed to do so.
 - If a fee waiver is requested and the requester made a fee commitment of at least \$25.00 you must begin processing the request without stopping the clock waiting for a fee waiver determination from the National FOIA Officer.

Once the request is fully clarified or the fee issue is resolved, the clock should be restarted.

Practice Tip: FOIAonline has a clock in the upper right hand corner which keeps track of how many days have passed since the National FOIA Office perfected the request.

Tracks of FOIA Requests

FOIA requests are classified in three categories depending on the number of program offices involved, the subject matter(s), the volume of processed records, or the processing time.

- Simple, non-voluminous requests: these requests are generally processed in 20 days or less, have 25 responsive records or less, and involve no more than one program office.
- Complex or voluminous requests: these requests usually need more than 20 days to be processed, involve more than 25 records, and encompass more than one program office.
- Expedited requests: these requests are required to be processed "as soon as practicable". The requester must demonstrate, in writing, that he or she meets the criteria. The statute requires agencies to "make a determination of whether to provide expedited processing" within 10 days.

Practice Tip: Change the track during processing. The Department of Justice monitors performance within each track!

Knowledge Check

What is the statutory time limit to answer a simple FOIA request?

- A. 10 working days
- B. 30 working days
- C. 3 months
- D. 20 working days

Requests about Publicly Available Information

Some FOIA requests are for documents that are already available online or through an EPA database. If all of the records are available online, direct the requester to the proper website in your final response letter. This is a full release. These most commonly used databases are:

- EPA's website
- FOIAonline
- MyProperty
- EnviroFacts
- Data.gov
- ECHO
- ChemView

Practice Tip: It may be helpful to figure out if information can be quickly and easily provided to the requester from these sources to prevent follow up requests and questions.

These types of requests can be closed once you respond to the requester and direct them to the specific location where EPA has made the information publicly available.

FOIAonline: FOIA Workflow, Tracking and Records Repository

FOIAonline is a multi-agency cloud-based application that allows the public to:

- Submit FOIA requests to participating agencies;
- Track the progress of an agency's response to a request;

- Search for information previously made available through FOIA requests that are already closed;
- Generate real time reports on FOIA processing.

For agency users, FOIAonline is a workflow system and repository that enables users to:

- Receive, manage, track, and respond to FOIA requests;
- Generate reports;
- Communicate with requesters;
- Manage FOIA case files in accordance with the record schedule.

FOIAonline is accessible at: <https://www.foiaonline.gov>

Knowledge Check

The public can use FOIAonline for which of the following purposes?

- A. Search for previously released records from October 1, 2012, to the present.
- B. Submit FOIA requests to participating agencies.
- C. Track the progress of an agency's response to a request.
- D. Generate up-to-the-minute reports on FOIA processing.
- E. All of the above.

Types of Responses to FOIA Requests

Interim and Final

Responses to FOIA requests can be either interim or final.

- Interim responses are generally provided in case of complex requests which require searches in multiple locations or involve voluminous records.
- Interim or partial releases demonstrate to requesters that the agency is actively processing their requests and that there is progress.
- Interim responses can be a valuable tool for narrowing requests since these releases provide insight into the types of responsive records and may result in the requester narrowing his or her request or submitting a new request.
- When there is a search for records, final [responses](#) to FOIA requests are usually one of 4 types:
 - 1) Full Grant Response
 - 2) Partial Grant/Denial Response
 - 3) Full Denial Response
 - 4) No Records Response

Types of Responses to FOIA Requests

Grant and Denial

- Full Grant Response is when responsive records, in their entirety, are releasable to the requester.
- Partial Grant/Denial Response - Portions of responsive records or some of the responsive records will be withheld under one or multiple FOIA exemptions. For more on FOIA exemptions go to the FY2018 Mandatory FOIA training or [Department of Justice's Guide to the FOIA](#).

- Full Denial is when responsive record(s), in the entirety, will be withheld because they are covered by either one or multiple FOIA exemptions.
- No Records Response is used when a reasonable search is conducted and no responsive records were found. Please provide a comment in FOIAonline or an email to your FOIA Coordinator documenting your search terms and location.

Knowledge Check

Which one of the following is not a final response to a FOIA request?

- A. Full grant response
- B. Interim response
- C. No records response
- D. Full denial response
- E. Partial grant response

Training 2019

For additional information please go to the National FOIA Office website at:

<https://www.epa.gov/foia>

Or Intranet site at: <http://intranet.epa.gov/foia/>

Remember – FOIA is everyone's responsibility!

Please notify your manager that you have completed the Text Alternative version of this training.

Completion Certificates in FedTalent

EPA is making great strides in reducing paper and printer ink usage. The decision was made to make FedTalent, as the Agency learning management system, as paperless as possible.

Once an employee successfully completes a training, that completion is recorded to the employee's Record of Learning. FedTalent's Record of Learning will be used as a record of successful course completion.

To access your Record of Learning:

- 1) Select the My Learning tab, and
- 2) Select Record of Learning from the drop-down menu.

You can export your Record of Learning to .csv, .xlsx, .pdf and other formats.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENVIRONMENTAL INFORMATION

AUG - 8 2016

MEMORANDUM

SUBJECT: Freedom of Information Act (FOIA) Standard Appeal Language for Use in FOIA Final Response Letters

FROM: Larry F. Gottesman, Agency FOIA Officer
Office of Environmental Information

Kevin Miller, Assistant General Counsel for Information Law
Office of General Counsel

TO: National FOIA Service Center
Regional FOIA Officers
National FOIA Coordinators
Regional Counsel

This memorandum transmits the updated FOIA standard appeal language developed by the Agency FOIA program and the Office of General Counsel to comply with the new requirements for FOIA final response letters in the FOIA Improvement Act of 2016. The attached standard appeal language notifies the requester of the right to file an appeal within 90 calendar days and the right to seek dispute resolution services from the Agency's FOIA Public Liaison and the Office of Government Information Services (OGIS). This language should appear in all FOIA final response letters, effective immediately, to ensure compliance with these requirements. Additionally, the use of this standard appeal language will ensure consistency among EPA programs in the use of administrative appeal language when responding to FOIA requests.

Should you or your staff have any questions, please contact Larry F. Gottesman, National FOIA Officer at Gottesman.larry@epa.gov or 202-566-2162.

Attachment

cc: Rebecca Moser, Director, Office of Enterprise Information Programs
Wendy Blake, Associate General Counsel, General Law Office
Becky Dolph, Director, FOIA Expert Assistance Team

APPEAL LANGUAGE FOR ALL FINAL FOIA RESPONSES, EXCEPT AS NOTED BELOW:

This letter concludes our response to your request. You may appeal this response by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals *received* after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (301) 837-1996 or (877) 684-6448; or fax, (301) 837-0348.

APPEAL LANGUAGE IF THERE IS AN INITIAL WITHHOLDING BASED ON EXEMPTION 4:

This letter concludes our response to your request. As noted above, the information withheld under Exemption 4 will be reviewed by the appropriate legal office, which will issue a final confidentiality determination. Therefore, you do not need to appeal the withholding of information under Exemption 4. Once the legal office issues a final confidentiality determination, EPA will notify you whether the information qualifies for confidential treatment or may be released. To the extent you would like to appeal any other issue, including any non-Exemption 4 withholdings, you may appeal this response by email at hq.foia@epa.gov or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal by hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20004. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. Appeals received after 5:00 pm EST will be considered received the next business day. The Agency will not consider appeals *received* after the 90-calendar-day limit. The appeal letter should clearly identify the determination being appealed, including the assigned FOIA tracking number shown above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail to the Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD, 20740-6001; email, ogis@nara.gov; telephone, (301) 837-1996 or (877) 684-6448; or fax, (301) 837-0348.